

APPEAL NO. 040899
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 18, 2004. With respect to the issues before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant satisfied the good faith requirement in the relevant qualifying periods pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) by demonstrating that she had no ability to work and that the claimant is entitled to SIBs for the seventh and eighth quarters are against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The requirements for entitlement to SIBs are set out in Section 408.142 and in Rule 130.102. It is undisputed that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating of 15% or greater for her compensable injury; that she did not commute her impairment income benefits; that the seventh quarter of SIBs ran from September 27 through December 26, 2003, with a corresponding qualifying period of June 15 through September 13, 2003; and that the eighth quarter of SIBs ran from December 27, 2003, through March 26, 2004, with a corresponding qualifying period of September 14 through December 13, 2003. With regard to the required "good faith" requirement, the hearing officer was satisfied that the claimant proved that she had no ability to work during the qualifying periods for the seventh and eighth quarters of SIBs. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established (Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The hearing officer was persuaded that the January 9, 2003, and December 5, 2003, reports from Dr. B were sufficient to satisfy the requirement of Rule 130.102(d)(4) that the claimant provide a narrative report from a doctor specifically explaining how the claimant's injury caused a total inability to work. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse the good faith determination, or the determination that the claimant is entitled to SIBs for the seventh and eighth quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). We find no merit in the carrier's assertion that the hearing officer could not consider the reports, which fell outside the dates of the qualifying period for the seventh quarter, to determine the claimant's ability to work in that period. The Appeals Panel has noted that medical evidence from outside the qualifying period may be considered by the hearing officer,

insofar as the hearing officer finds it probative of the claimant's condition in the qualifying period in issue. Texas Workers' Compensation Commission Appeal No. 030719, decided April 30, 2003. The hearing officer was acting within her province in determining that the evidence from outside the qualifying period for the seventh quarter was persuasive to establish that the claimant had no ability to work in that qualifying period. That is particularly true, where, as here, the record does not reflect significant changes in the claimant's condition in terms of her ability to work from the January 2003 and December 2003 narratives.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **SECURITY INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge